

Message Text

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DRAFTED BY EUR/RPM:JSDAVISON:RM

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TO USMISSION NATO IMMEDIATE

C O N F I D E N T I A L STATE 270178

E.O. 11652: GDS

TAGS: CSCE

SUBJECT: CSCE: ROMANIAN NON-USE OF FORCE (NUF)

PROPOSAL

NATO FOR DEPUTY ASSISTANT SECRETARY LOWENSTEIN FROM EUR/RPM

HOLD FOR OPENING OF BUSINESS

1. WE REQUEST YOUR APPROVAL ON DRAFT MESSAGE SET OUT BELOW TO USDEL GENEVA WHICH CONVEYS US ACCEPTANCE OF THE LATEST ROMANIAN FORMULATION FOR KEY THIRD PARA OF THEIR NON-USE OF FORCE PROPOSAL. THIS MOVE WOULD GO A LONG WAY TO MEETING ROMANIA'S CENTRAL CONCERN IN CSCE AND ACCORD WITH THE INCREASINGLY FORTHCOMING POSTURE TOWARD ROMANIA, WHICH WE HAVE ASSUMED SINCE THE SECRETARY'S TALKS IN BUCHAREST IN NOVEMBER.

2. ON NOVEMBER 20 FOLLOWING DISCUSSION WITH THE SOVIETS, THE ROMANIANS INFORMED US, AND SUBSEQUENTLY INFORMED THE
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SPECIAL WORKING BODY, THAT THEY WISH TO ALTER PARA 3 OF

THEIR NUF PROPOSAL--WHICH HAD PREVIOUSLY BEEN DRAFTED TO PROHIBIT THE "ENTRY AND MAINTAINING OF FORCES" WITHOUT CONSENT--AS FOLLOWS: "TO REFRAIN, IN ACCORDANCE WITH THEIR DUTY IN RESPECT TO NON-USE OF FORCE, FROM ANY USE OF MILITARY FORCE AGAINST ANOTHER PARTICIPATING STATE INCONSISTENT WITH THE PURPOSES AND PRINCIPLES OF THE UNITED

NATIONS AND OF THE PRESENT (TITLE OF THE DOCUMENT) INCLUDING FROM INVADING OR ATTACKING THE TERRITORY OF SUCH A STATE."

3. THIS FORMULATION, ALTHOUGH SUBSTANTIALLY DIFFERENT FROM THE EARLIER VERSION OF PARA 3, LEAVES US WITH THE FAMILIAR PROBLEM OF A FUDGED REFERENCE TO PRINCIPLES OF INTERNATIONAL LAW, SPECIFICALLY THE UN CHARTER, ON WHICH ALLIED RIGHTS OF INTERVENTION IN GERMANY AND LEGITIMATE USES OF FORCE IN GENERAL DEPEND. IN PRESENTING THIS NEW VERSION OF PARA 3 TO US, HOWEVER, THE ROMANIANS AGAIN STRESSED THAT A DIRECT REFERENCE TO THE CHARTER WOULD VITIATE THEIR WHOLE PROPOSAL, WHICH IS DESIGNED TO DILUTE INSOFAR AS POSSIBLE A SOVIET ASSERTION OF RIGHTS OF INTERVENTION BASED ON THE ENEMY STATES CLAUSES (ARTICLES 51 AND 107) OF THE CHARTER. THE ROMANIANS TELL US THE SOVIETS CAN ACCEPT THEIR PROPOSAL AS NOW DRAFTED, AND WHEN IT WAS DISCUSSED IN THE SWB SOVIETS DID NOT VOICE OBJECTION.

4. THEREFORE, THE ROMANIANS HAVE ASKED WHETHER WE CAN REASSESS OUR POSITION, WHILE INDICATING THAT OUR EARLIER SUGGESTION TO INSERT A BRACKETED REFERENCE TO THE CHARTER FOR THE TIME BEING WOULD NOT BE ACCEPTABLE IN VIEW OF THE IMPORTANCE OF THIS LANGUAGE TO THE WHOLE CONCEPT OF THEIR NUF PROPOSAL.

5. OUR DELEGATION IN GENEVA HAS ASKED THE DEPARTMENT TO CONSIDER AN APPROACH UNDER WHICH THE US WOULD ACCEPT PARA 3 OF THE ROMANIAN PROPOSAL AS IT STANDS AND INDICATE VIA FOOTNOTE THAT OUR FINAL APPROVAL WOULD BE CONTINGENT UPON AN AGREEMENT ON A SEPARATE FORMULATION CONCERNING QUADRIPARTITE RIGHTS WHICH ADEQUATELY PROTECTS OUR POSITION IN GERMANY. THE DELEGATION ALSO SUGGESTED SUPPLEMENTING

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THIS APPROACH WITH A PREAMBULAR RESERVATION ON LEGITIMATE USES OF FORCE. THE ROMANIANS HAVE INDICATED TO OUR DELEGATION THAT THE FOREGOING WOULD BE AGREEABLE.

6. THE LEGAL ADVISOR'S OFFICE BELIEVES THAT USDEL'S RECOMMENDATION IS ACCEPTABLE AND THAT IN VIEW OF THE ABSENCE OF SPECIFICITY IN THE NEW ROMANIAN LANGUAGE FOR PARA 3 WE NEED NO LONGER INSIST EVEN ON A PREAMBULAR

REFERENCE TO THE CHARTER. WE THEREFORE PROPOSE THAT YOU AUTHORIZE THE FOLLOWING MESSAGE TO THE DELEGATION WHICH HAS BEEN DRAFTED BY THE LEGAL ADVISOR'S OFFICE, AND WHICH EUR/RPM IS CLEARING WITH THE COUNSELOR'S OFFICE.

7. "WHILE ROMANIAN OBJECTIVE OF CASTING POLITICAL DOUBT ON VIABILITY OF ENEMY STATES ARTICLES OF UN CHARTER RUNS

COUNTER TO US INTERESTS IN GERMANY, WE HAVE CONCLUDED THAT WE CAN LIVE WITH ROMANIAN FORMULATION FOR PARA 3 OF ITS NON-USE OF FORCE TEXT (NUF) ON UNDERSTANDING THAT FOUR-POWER RIGHTS DISCLAIMER WILL BE MADE APPLICABLE. WE DEFER TO JUDGMENT OF DELEGATION ON ADEQUACY OF FOOTNOTE TO PROTECT THIS POSITION, GIVEN GENERAL USE OF BRACKETED LANGUAGE BY MOST DELEGATIONS TO PROTECT POSITIONS OF IMPORTANCE. IN CONVEYING FOREGOING TO LIPATTI YOU SHOULD NOTE WE ARE PLEASED TO BE ABLE TO ACCOMMODATE THIS MAJOR ROMANIAN CONCERN.

8. WE BELIEVE UK SHOULD BE DISSUADED FROM EFFORT TO INCORPORATE SOME SPECIFIC REFERENCE TO CHAPTER VII OF UN CHARTER OR MATTERS COVERED THEREIN, SINCE THIS WOULD INEVITABLY INTRODUCE PROBLEM OF CHAPTER VIII AND MIGHT EVEN PUT IN DOUBT ADEQUACY OF ENEMY STATES ARTICLE SOLUTION. BRITISH POSITION IS STEP TOWARDS ENUMERATION. OUR PREFERRED APPROACH IS TO MAKE CLEAR BY THE FAILURE TO STATE EVEN THE OBVIOUS EXCEPTIONS TO THE RULE, SUCH AS SELF-DEFENSE AND SECURITY COUNCIL MEASURES, THAT THE ROMANIAN NON-USE OF FORCE TEXTS ARE INTENDED AS GENERAL POLITICAL STATEMENTS, RATHER THAN CAREFUL AND COMPREHENSIVE LEGAL DEFINITIONS.

9. WHILE PREAMBULAR RESERVATION ON LEGITIMATE USES OF
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FORCE MIGHT BE USEFUL, WE DO NOT THINK THAT ACCEPTABILITY OF PARA 3 OF ROMANIAN NUF DEPENDS ON IT. WE ARE NOT ATTRACTED TO OTHER SOLUTIONS SUGGESTED IN PARA 5 OF GENEVA 7346." KISSINGER

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